

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

TRANSCANADA USA SERVICES, INC.,

Plaintiff,

v.

Civil Action No. 2:19-cv-00896

**ZURICH AMERICAN INSURANCE COMPANY,
a foreign corporation; and
WESTCHESTER FIRE INSURANCE COMPANY,
a foreign corporation,**

Defendants.

PLAINTIFF'S MOTION TO LIFT STAY

Plaintiff TransCanada USA Services, Inc. (“TransCanada”), moves to lift the stay as ordered by this Court in its Memorandum and Order dated March 19, 2020 (“Order”) (Doc. 19), and allow TransCanada to continue to prosecute all claims asserted in this civil action. As grounds for this Motion, TransCanada states as follows:

1. The Court entered the Order after defendant Zurich American Insurance Company (“Zurich”) moved for a stay on the grounds that the insurance policies at issue in this litigation were part of the bankruptcy estate of Welded Construction, L.P. (“Welded”), and therefore subject to the automatic stay provision under 11 U.S.C. §362(a). While the Court found that “the insurance policies at issue are part of the bankruptcy estate and the automatic stay provision under 11 U.S.C. § 362(a)(3) is applicable[,]” the Court further found that “a stay of this action for a period of ninety (90) days is warranted to give TransCanada the opportunity to file an appropriate motion before the bankruptcy court if it chooses to do so.” Order at 8. Per these findings, the Court ordered that

“this matter be **stayed for a period of ninety (90) days or until further order of the Court.**”

Order at 8 (emphasis in original).

2. Per the Court’s suggestion, TransCanada entered into a Stipulation Granting TransCanada USA Services Inc. Limited Relief from the Automatic Stay (“Stipulation”) that was filed with the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Court”), which is presiding over the bankruptcy proceedings involving Welded. The Bankruptcy Court entered an Order Approving Stipulation Granting TransCanada USA Services Inc. Limited Relief from the Automatic Stay (“Order”) on May 2, 2020. See Exhibit A (Order, which includes the Stipulation attached as Exhibit 1).

3. The Bankruptcy Court’s Order

lifts and/or modifies the Automatic Stay for the sole and exclusive purpose of permitting TransCanada (which is intended to specifically include any other defendants now or hereafter joined to the Tibbs Litigation that are affiliates of TransCanada, if any) to tender defense to, request or seek indemnity from and pursue any coverage from the Applicable Insurance in respect of any claims asserted in the Tibbs Litigation, including, without limitation, from the Applicable Insurers, whether as additional insureds or pursuant to any endorsements or other terms of such Applicable Insurance that may extend to such party in respect of any claims asserted in the Tibbs Litigation, including, as may be necessary, to allow TransCanada to prosecute the Declaratory Action or pursue other litigation against applicable insurers in respect of the Applicable Insurance, including the Applicable Insurers.

Order at 2.

4. The Stipulation defines “Applicable Insurance” as “the Debtors’ applicable insurance policies that may provide coverage in respect of” the claims made in the Tibbs Litigation pending in the Northern District of West Virginia. Stipulation at 2. The Stipulation defines “Applicable Insurers” as Zurich and Westchester Fire Insurance Company. Stipulation at 2. Finally, the Stipulation defines “Declaratory Action” as follows: “TransCanada commenced a

related action to the Tibbs Litigation in the United States District Court for the Southern District of West Virginia (the “West Virginia District Court”) against the Applicable Insurers for, among other things, a declaratory judgment that the Applicable Insurers owe a duty to defend and indemnify TransCanada under the Insurance Policies (the “Declaratory Action”) for the underlying claims asserted in the Tibbs Litigation.” Stipulation at 2.

5. The Order, therefore, specifically lifts the bankruptcy stay to allow all of the claims asserted by TransCanada in this civil action to proceed.

For the reasons detailed above, therefore, TransCanada asks that the Court lift the stay in this case as ordered by this Court in its Memorandum and Order dated March 19, 2020 and allow TransCanada to continue to prosecute all claims asserted in this civil action.

TRANSCANADA USA SERVICES, INC.

By Counsel

s/ Mychal S. Schulz

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CERTIFICATE OF SERVICE

As counsel for the Plaintiff, TransCanada USA Services, Inc., I certify that on May 5, 2020 I served the foregoing ***PLAINTIFF'S MOTION TO LIFT STAY*** by filing the same to the Court's CM/ECF System, which will send notification of such filing to counsel of record.

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